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GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## Los Angeles Regional Water Quality Control Board

March 26, 2013

Colonel R. Mark Toy  
U.S. Army Corps of Engineers Los Angeles  
P.O. Box 2711  
Los Angeles, CA 90053

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
CLAIM NO. 7011 2970 0000 0645 2963

### **CALIFORNIA WATER CODE SECTION 13267 ORDER NO. R4-2013-0039 TO SUBMIT INFORMATION – ANNUAL SEDIMENT, DEBRIS, AND/OR VEGETATION REMOVAL PROJECT IN THE LOS ANGELES RIVER**

Dear Colonel Toy,

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) received the United States Army Corps of Engineers' (USACOE) February 22, 2013 amended response to Investigative Order No. R4-2013-0001. The purpose of the amended response was to address activities in the Los Angeles River and the apparent discrepancy between the USACOE's February 11, 2013 Technical Report and the Regional Board's observations during a January 15, 2013 site inspection.


The USACOE's amended response provided information about annual sediment and debris removal projects in the Los Angeles River; projects previously unknown to the Regional Board. The amended response suggested that the evidence of heavy machinery in the Los Angeles River observed by Regional Board staff on January 15, 2013 was in fact part of a separate removal project that occurred concurrently with the vegetation management project. With respect to the annual sediment and debris removals in the Los Angeles River, the USACOE asserts that these activities are exempt from Clean Water Act requirements pursuant to Section 404(f)(1)(B).

As part of the Regional Board's effort to protect water quality and investigate the quality of waters within its jurisdiction, the USACOE is required to submit technical and/or monitoring reports as required in Investigative Order No. R4-2013-0039. The USACOE's assertion of the applicability of Section 404(f)(1)(B) to the annual sediment and debris removals in the Los Angeles River does not negate the requirement to respond to this Investigative Order of the Regional Board pursuant to California Water Code Section 13267. The deadline for submission of the required technical and/or monitoring report is April 25, 2013.

March 26, 2013

If you have any questions regarding this matter, please call Dr. L.B. Nye at (213) 576-6785.

Sincerely,

  
Samuel Unger, P.E.  
Executive Officer

Enclosure: Investigative Order No. R4-2013-0039

cc: via US Mail w/ Enclosure

The Honorable Kevin de León  
State Capitol, Room 5108  
Sacramento, California 95814-4900

The Honorable Fran Pavley  
State Capitol, Room 4035  
Sacramento, California 95814-4900

cc: via electronic mail w/ Enclosure

Mr. Eric Katz  
Supervising Deputy Attorney General  
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Mr. Christian Carrigan  
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Mr. David Weeshoff  
President, San Fernando Valley Audubon Society

Colonel R. Mark Toy  
U.S. Army Corps of Engineers

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March 26, 2013

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**Los Angeles Regional Water Quality Control Board**

**INVESTIGATIVE ORDER NO. R4-2013-0039 TO PROVIDE A TECHNICAL OR  
MONITORING REPORT ON  
THE ANNUAL SEDIMENT, DEBRIS, AND/OR VEGETATION REMOVAL PROJECT  
IN THE LOS ANGELES RIVER**

**CALIFORNIA WATER CODE SECTION 13267**

**DIRECTED TO THE US ARMY CORPS OF ENGINEERS LOS ANGELES  
P.O. BOX 2711  
LOS ANGELES, CA 90053**

The Regional Water Quality Control Board, Los Angeles Region (Regional Board) makes the following findings and issues this Order pursuant to California Water Code section 13267.

1. On January 10, 2013, the Executive Officer of the Regional Board issued the United States Army Corps of Engineers (USACOE) Investigative Order No. R4-2013-0001 (Investigative Order) to provide a technical or monitoring report on the unauthorized removal of vegetation in the Sepulveda Basin that was reported in a December 29, 2012 article in the Los Angeles Times. The Site where the vegetation removal occurred is located immediately south of Burbank Boulevard and west of Interstate 405 and Sepulveda Dam along the Los Angeles River. A small man-made pond called "Pothole Pond" was located on the Site prior to the vegetation removal project. The USACOE owns and originally developed this portion of the Sepulveda Basin in approximately 1979.
2. The Investigative Order required the USACOE to submit a technical report addressing twenty-six (26) items. Items 14 and 15 of the Investigative Order addressed activities in the Los Angeles River. Specifically, Item 14 stated, "[t]he dates and times that heavy equipment accessed the Los Angeles River or Los Angeles River bottom, before and after vegetation removal." Item 15 stated, "[t]he volume of fill material including soils, sediment and vegetation discharged in the Los Angeles River."
3. On February 11, 2013, the USACOE responded to the Investigative Order and stated, with respect to Items 14 and 15, that "[n]o heavy equipment accessed the Los Angeles River invert" and "[f]ill material was not discharged in the waterway," respectively.
4. After reviewing the February 11, 2013 response, the Executive Officer of the Regional Board sent a letter to the USACOE dated February 15, 2013 requiring the USACOE to submit an amended response to the Investigative Order. The USACOE's response did not coincide with Regional Board and State Water Board staff's observations during a site

inspection on January 15, 2013. Staff observed evidence of soil and debris discharges in the Los Angeles River and use of heavy equipment and machinery along the banks and in the Los Angeles River channel. Photos documenting these observations were enclosed with the Regional Board's February 15, 2013 letter.

5. On February 22, 2013, the USACOE submitted an amended response to address the Regional Board's requests for "an accounting of activities in the river, and an explanation resolving the discrepancy between the Technical Report and your [the Regional Board's] field observations." Specifically in its amended response, the USACOE stated it "annually removes accumulated sediment and debris from the 1,825-foot long segment of the L.A. River between Burbank Boulevard and the outlet works. The entire length of this segment is concrete lined. The work typically occurs between September and December. The 2013 cleanout occurred on December 10 through December 11, 2013 [sic]. Bulldozers accessed the river from the east bank near the Encino Creek confluence, and gathered sediment into piles. A rubber wheeled loader scooped sediment and placed it into a dump truck. Approximately 200 cubic yards of sediment was removed and transported to a placement site in the uplands within the vicinity of the spillway."
6. California Water Code section 13267, subdivision (b)(1) states, in part: In conducting an investigation. . . , the Regional Board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region . . . shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.
7. This Order identifies the USACOE as a person who has discharged or is suspected of having discharged waste within the jurisdiction of the Regional Board because the USACOE stated that is responsible for annually removing accumulated sediment from the 1,825-foot long segment of the Los Angeles River as described in Paragraph 5 above.
8. This Order requires the USACOE to prepare and submit technical and/or monitoring reports providing complete and detailed information addressing Items 1 through 14 below.
9. The Regional Board requires this information in order to determine the nature and extent of possible impacts to water quality, to assess whether further action is required to protect beneficial uses, and to determine what actions can be taken to prevent water quality impacts from vegetation removal projects in the future.
10. The burdens, including costs, of these reports bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. The removal of sediment, debris, and/or vegetation from waters of the State and the United States can result in significant impacts on aquatic habitat and water quality. The information is necessary to

identify whether such water quality impacts occurred, to assure adequate restoration of the areas of removal, if necessary, and to determine what actions can be taken to prevent unauthorized water quality impacts in the future.

11. The issuance of this Order is an enforcement action by a regulatory agency and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15321, subdivision (a)(2), Chapter 3, Title 14 of the California Code of Regulations.
12. Any person aggrieved by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must *receive* the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

**THEREFORE, IT IS HEREBY ORDERED** that the US Army Corps of Engineers Los Angeles, pursuant to section 13267, subdivision (b) of the California Water Code, is required to submit the following:

By April 25, 2013, we require a technical report that includes:

- 1) The precise description of the location(s) in and along the Los Angeles River, including Encino Creek, the Encino – Los Angeles River confluence, Haskell Creek, and Haskell – Los Angeles River confluence, where sediment, debris, and/or vegetation removal occurred on December 10-11, 2012;
- 2) A detailed site map or maps showing the point(s) of entry to the Los Angeles River and the areas where sediment, debris, and/or vegetation removal occurred;
- 3) The times that the December 10-11, 2012 removal commenced and ended;
- 4) The dates and times that other instances of annual sediment, debris, and/or vegetation removal from 2007 to the present;
- 5) The names and addresses of all contractors involved in the annual sediment, debris, and/or vegetation removal, and if no contractor was used, the names of USACOE personnel in charge of the overseeing the annual removal projects;
- 6) A detailed description of the methods used to remove sediment, debris, and/or vegetation in the Los Angeles River including a specific description of the equipment and/or machinery and how many were used;

- 7) For each removal project since 2007, a detailed summary of the total amount of sediment or debris removed. For each removal project since 2007, a detailed summary of the total amount of vegetation removed. Include copies of the calculations, records, data, and photographs (if available) used in determining the estimate of the amount removed;
- 8) Any written plans or project descriptions pertaining to sediment, debris, and/or vegetation removal or maintenance activities in the Los Angeles River;
- 9) An analysis of the impacts of sediment, debris, and/or vegetation removal on beneficial uses of the surface waters. Designated beneficial uses of the Los Angeles River in the Sepulveda Basin (Los Angeles River Reach 5) include: Municipal and Domestic Supply; Industrial Service Supply; Ground Water Recharge; Warm Freshwater Habitat; Wildlife Habitat; Wetland Habitat; Water Contact Recreation and Non-contact Water Recreation;
- 10) A description of what measures, if any, were taken by the USACOE to prevent or mitigate and/or monitor sediment releases downstream in the Los Angeles River from sediment, debris, and/or vegetation removal activities;
- 11) Copies of all permits issued for the annual removals from any federal, state or local agency and all documents developed to satisfy the requirements of the National Environmental Policy Act and/or California Environmental Quality Act;
- 12) A list of all agencies that the USACOE reports the annual removals to and the time the reports were made regardless of whether permits were obtained;
- 13) A description of public outreach efforts concerning the sediment, debris, and/or vegetation removal; and
- 14) Any other documentation or correspondence the USACOE feels is relevant.

Each of the above items shall be submitted as a pdf via email or disk (CD-ROM or CD) to Dr. L.B. Nye, 320 W. 4th Street, Suite 200, Los Angeles, CA 90013-2343, LB.Nye@waterboards.ca.gov, (213) 576-6785, and submitted by you under penalty of perjury under the laws of the State of California.

The technical report is required to be submitted under California Water Code section 13267 Order. Pursuant to 13267, subdivision (a) of the California Water Code, any person who fails to submit reports in accordance with the Order is guilty of a misdemeanor. Pursuant to section 13268, subdivision (b)(1) of the California Water Code, failure to submit the required technical report described above by the specified due date(s) may result in the imposition of administrative civil liability by the Regional Board in an amount up to one thousand dollars (\$1,000) per day for

each day the technical report is not received after the above due date. These civil liabilities may be assessed by the Regional Board for failure to comply, beginning with the date that the violations first occurred, and without further warning.

The Regional Board, under the authority given by California Water Code section 13267, subdivision (b)(1), requires you to include a perjury statement in all reports submitted under the 13267 Order. The perjury statement shall be signed by a senior authorized representative (not by a consultant). The perjury statement shall be in the following format:

"I, [NAME], certify under penalty of perjury under the laws of the State of California that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

SO ORDERED

Samuel Unger  
Samuel Unger, P.E.  
Executive Officer

March 26, 2013  
DATE